

Senate Bill 71

By: Senators Heath of the 31st, Jackson of the 24th, Butterworth of the 50th, Douglas of the 17th, Murphy of the 27th and others

A BILL TO BE ENTITLED
AN ACT

To prohibit engaging in certain outdoor sporting activities while under the influence of alcohol, drugs, or other substances; to amend Code Section 27-3-7 of the Official Code of Georgia Annotated, relating to hunting under the influence of alcohol or drugs, so as to harmonize certain provisions with those applicable to driving a vehicle under the influence of alcohol, drugs, or other substances; to amend Chapter 7 of Title 52 of the Official Code of Georgia Annotated, relating to registration, operation, and sale of watercraft, so as to harmonize certain provisions relating to operation of vessels, water skis, aquaplanes, and surfboards while under the influence of alcohol or drugs with those applicable to driving a vehicle under the influence of alcohol, drugs, or other substances; to change certain provisions relating to ordering drugs or alcohol tests, implied consent notice, reports, suspension, hearing, and certificate of inspection relating to vessels; to provide an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 27-3-7 of the Official Code of Georgia Annotated, relating to hunting under the influence of alcohol or drugs, is amended by revising subsections (b) and (f) and adding a new subsection (f.1) as follows:

~~"(b) A person shall not hunt while:~~

~~(1) Under the influence of alcohol to the extent that it is less safe for the person to hunt;~~

~~(2) Under the influence of any drug to the extent that it is less safe for the person to hunt;~~

~~(3) Under the combined influence of alcohol and any drug to the extent that it is less safe for the person to hunt;~~

~~(4) The person's alcohol concentration is 0.10 grams or more at any time within three hours after such hunting from alcohol consumed before such hunting ended; or~~

~~(5) Subject to the provisions of subsection (c) of this Code section, there is any amount of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in~~

~~the person's blood or urine, or both, including the metabolites and derivatives of each or both without regard to whether or not any alcohol is present in the person's breath or blood. At any time and under any circumstances when a person would be prohibited by subsection (a) or (k) of Code Section 40-6-391 from driving or being in actual physical control of a moving vehicle on public roads, he or she shall also be prohibited from hunting at any place in this state. Violation of this subsection shall constitute unlawfully hunting while under the influence of alcohol or drugs."~~

"(f)(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person hunting in violation of subsection (b) of this Code section, the amount of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

~~(1) If there was at that time a blood alcohol concentration of 0.05 grams or less, it shall be presumed that the person was not under the influence of alcohol, as prohibited by paragraphs (1), (2), and (3) of subsection (b) of this Code section;~~

~~(2) If there was at that time a blood alcohol concentration in excess of 0.05 grams but less than 0.08 grams, such fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, as prohibited by paragraphs (1), (2), and (3) of subsection (b) of this Code section, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol, as prohibited by paragraphs (1), (2), and (3) of subsection (b) of this Code section;~~

~~(3) If there was at that time a blood alcohol concentration of 0.08 grams or more, it shall be presumed that the person was under the influence of alcohol, as prohibited by paragraphs (1), (2), and (3) of subsection (b) of this Code section; and inferences and considerations regarding whether a person was unlawfully hunting under the influence of alcohol the same as those inferences and considerations provided by subsection (b) of Code Section 40-6-392 regarding whether a person was unlawfully driving or in actual physical control of a moving vehicle under the influence of alcohol.~~

~~(4)(2) If there was at that time or within three hours after hunting, from alcohol consumed before such hunting ended, a blood alcohol concentration of 0.10 or more grams an alcohol concentration which is specifically unlawful under paragraph (5) of subsection (a) or paragraph (1) of subsection (k) of Code Section 40-6-391 for purposes of driving or being in actual physical control of a moving vehicle, the person shall be in violation of paragraph (4) of subsection (b) of this Code section.~~

(f.1) No plea of nolo contendere shall be accepted for any person under the age of 21 charged with a violation of this Code section."

SECTION 2.

Chapter 7 of Title 52 of the Official Code of Georgia Annotated, relating to registration, operation, and sale of watercraft, is amended by revising subsections (a), (d), (j), and (k) of Code Section 52-7-12, relating to operation of vessels, water skis, aquaplanes, and surfboards while under the influence of alcohol or drugs, as follows:

~~"(a) No person shall operate, navigate, steer, or drive any moving vessel, or be in actual physical control of any moving vessel, nor shall any person manipulate any moving water skis, moving aquaplane, moving surfboard, or similar moving device while:~~

~~(1) Under the influence of alcohol to the extent that it is less safe for the person to operate, navigate, steer, drive, manipulate, or be in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device;~~

~~(2) Under the influence of any drug to the extent that it is less safe for the person to operate, navigate, steer, drive, manipulate, or be in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device;~~

~~(3) Under the combined influence of alcohol and any drug to the extent that it is less safe for the person to operate, navigate, steer, drive, manipulate, or be in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device;~~

~~(4) The person's alcohol concentration is 0.10 grams or more at any time within three hours after such operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device from alcohol consumed before such operating, navigating, steering, driving, manipulating, or being in actual physical control ended; or~~

~~(5) Subject to the provisions of subsection (b) of this Code section, there is any amount of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in the person's blood or urine, or both, including the metabolites and derivatives of each or both without regard to whether or not any alcohol is present in the person's breath or blood. At any time and under any circumstances when a person would be prohibited by subsection (a) or (k) of Code Section 40-6-391 from driving or being in actual physical control of a moving vehicle on public roads, he or she shall also be prohibited from operating, navigating, steering, or driving any moving vessel; being in actual physical control of any moving vessel; or manipulating any moving water skis, moving aquaplane, moving surfboard, or similar moving device. Violation of this subsection shall constitute unlawfully operating, navigating, steering, driving, manipulating, or being in actual~~

physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device while under the influence of alcohol or drugs."

"(d)(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device while under the influence of alcohol, the amount of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

~~(1) If there was at that time an alcohol concentration of 0.05 grams or less, it shall be presumed that the person was not under the influence of alcohol, as prohibited by paragraphs (1), (2), and (3) of subsection (a) of this Code section;~~

~~(2) If there was at that time an alcohol concentration in excess of 0.05 grams but less than 0.08 grams, such fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, as prohibited by paragraphs (1), (2), and (3) of subsection (a) of this Code section, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol, as prohibited by paragraphs (1), (2), and (3) of subsection (a) of this Code section;~~

~~(3) If there was at that time an alcohol concentration of 0.08 grams or more, it shall be presumed that the person was under the influence of alcohol, as prohibited by paragraphs (1), (2), and (3) of subsection (a) of this Code section; and inferences and considerations regarding whether a person was unlawfully operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device while under the influence of alcohol the same as those inferences and considerations provided by subsection (b) of Code Section 40-6-392 regarding whether a person was unlawfully driving or in actual physical control of a moving vehicle while under the influence of alcohol.~~

~~(4)~~(2) If there was at that time or within three hours after operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device, from alcohol consumed before such operating, navigating, steering, driving, manipulating, or being in actual physical control ended, an alcohol concentration of 0.10 or more grams which is specifically unlawful under paragraph (5) of subsection (a) or paragraph (1) of subsection (k) of Code Section 40-6-391 for purposes of driving or being in actual physical control of a moving vehicle, the person shall be in violation of ~~paragraph (4) of subsection (a) of this Code section."~~

~~"(j) In any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of subsection (k) of this Code section, if there was at that time or within three hours after operating, navigating, steering, driving, or being in actual physical control of a moving vessel or personal watercraft from alcohol consumed before such operating, navigating, steering, driving, or being in actual physical control ended an alcohol concentration of 0.02 grams or more in the person's blood, breath, or urine, the person shall be in violation of subsection (k) of this Code section~~ Reserved.

~~(k)(1) A person under the age of 21 shall not operate, navigate, steer, drive, or be in actual physical control of any moving vessel, moving water skis, moving aquaplane, moving surfboard or similar moving device, or personal watercraft while the person's alcohol concentration is 0.02 grams or more at any time within three hours after such operating, navigating, steering, driving, or being in actual physical control from alcohol consumed before such operating, navigating, steering, driving, or being in actual physical control ended.~~

~~(2) No plea of nolo contendere shall be accepted for any person under the age of 21 charged with a violation of this Code section."~~

SECTION 3.

Said chapter is further amended by revising Code Section 52-7-12.5, relating to ordering drugs or alcohol tests, implied consent notice, reports, suspension, hearing, and certificate of inspection relating to vessels, as follows:

~~"52-7-12.5.~~

(a) The test or tests required under Code Section 52-7-12 shall be administered as soon as possible at the request of a law enforcement officer having reasonable grounds to believe that the person has been operating or was in actual physical control of a moving vessel upon the waters of this state in violation of Code Section 52-7-12 and the officer has arrested such person for a violation of Code Section 52-7-12, any federal law in conformity with Code Section 52-7-12, or any local ordinance which is identical to Code Section 52-7-12 in accordance with Code Section 52-7-21 or the person has been involved in a boating accident resulting in serious injuries or fatalities. Subject to Code Section 52-7-12, the requesting law enforcement officer shall designate which test or tests shall be administered, ~~provided that the officer shall require a breath test or a blood test and may require a urine test~~ initially and may subsequently require a test or tests of any substances not initially tested.

(b) At the time a chemical test or tests are requested, the arresting officer shall select and read to the person the appropriate implied consent ~~warning~~ notice from the following:

(1) Implied consent notice for suspects under age 21:

171 'Georgia law requires you to submit to state administered chemical tests of your blood,
172 breath, urine, or other bodily substances for the purpose of determining if you are under
173 the influence of alcohol or drugs. If you refuse this testing, your privilege to operate
174 a vessel on the waters of this state will be suspended for a minimum period of one year.
175 Your refusal to submit to the required testing may be offered into evidence against you
176 at trial. If you submit to testing, the results of that test or tests may be used against you.
177 If the results of such test or tests indicate an alcohol concentration of ~~0.02 grams~~ (state
178 the same amount as that specified in paragraph (1) of subsection (k) of Code Section
179 40-6-391) or more or the presence of any illegal drug, your privilege to operate a vessel
180 on the waters of this state may be suspended for a minimum period of one year. After
181 first submitting to the required state tests, you are entitled to additional chemical tests
182 of your blood, breath, urine, or other bodily substances at your own expense and from
183 qualified personnel of your own choosing. Will you submit to the state administered
184 chemical tests of your (designate which tests) under the implied consent law?'; or

185 (2) Implied consent notice for suspects age 21 or over:

186 'Georgia law requires you to submit to state administered chemical tests of your blood,
187 breath, urine, or other bodily substances for the purpose of determining if you are under
188 the influence of alcohol or drugs. If you refuse this testing, your privilege to operate a
189 vessel on the waters of this state will be suspended for a minimum period of one year.
190 Your refusal to submit to the required testing may be offered into evidence against you
191 at trial. If you submit to testing, the results of that test or tests may be used against you.
192 If the results of such test or tests indicate an alcohol concentration of ~~0.10 grams~~ (state
193 the same amount as that specified in paragraph (5) of subsection (a) of Code Section
194 40-6-391) or more or the presence of any illegal drug, your privilege to operate a vessel
195 on the waters of this state may be suspended for a minimum period of one year. After
196 first submitting to the required state tests, you are entitled to additional chemical tests
197 of your blood, breath, urine, or other bodily substances at your own expense and from
198 qualified personnel of your own choosing. Will you submit to the state administered
199 chemical tests of your (designate which tests) under the implied consent law?'

200 If any such notice is used by a law enforcement officer to advise a person of his or her
201 rights regarding the administration of chemical testing, such person shall be deemed to
202 have been properly advised of his or her rights under this Code section and under Code
203 Section 52-7-12.6 and the results of any chemical test, or the refusal to submit to a test,
204 shall be admitted into evidence against such person. ~~This notice shall be deemed~~
205 ~~sufficient if such notice read by an arresting officer is substantially complied with.~~ Such
206 notice shall be read in its entirety but need not be read exactly so long as the substance
207 of the notice remains unchanged.

~~(c) Subsection (b) of this Code section shall apply to any case wherein the request for chemical testing is made regarding an offense committed on or after June 1, 1998. Subsection (b) of this Code section shall not apply to any case wherein the request for chemical testing was made regarding an offense committed prior to June 1, 1998, in which case those provisions of former Code Section 52-7-12 governing the admissibility of evidence of results of chemical testing or refusal to submit to chemical testing which were in effect at the time the offense was committed shall apply~~ Reserved.

(d) If a person under arrest or a person who was involved in any boating accident resulting in serious injuries or fatalities submits to a chemical test upon the request of a law enforcement officer and the test results indicate that a suspension of the privilege of operating a vessel on the waters of this state is required under this Code section, the results shall be reported to the department. Upon the receipt of a sworn report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been operating or was in actual physical control of a moving vessel upon the waters of this state in violation of Code Section 52-7-12 or that such person had been operating or was in actual physical control of a moving vessel upon the waters of this state and was involved in a boating accident involving serious injuries or fatalities and that the person submitted to a chemical test at the request of the law enforcement officer and the test results indicate either an alcohol concentration of ~~0.10 grams~~ an amount the same as that specified in paragraph (5) of subsection (a) of Code Section 40-6-391 or more or, for a person under the age of 21, an alcohol concentration of ~~0.02 grams~~ an amount the same as that specified in paragraph (1) of subsection (k) of Code Section 40-6-391 or more, and the vessel being operated was a motorized vessel having ten or more horsepower or was a sailboat more than 12 feet in length, the department shall suspend the person's privilege to operate a vessel upon the waters of this state pursuant to Code Section 52-7-12.6, subject to review as provided for in this Code section.

(e) If a person under arrest or a person who was involved in any boating accident resulting in serious injuries or fatalities refuses, upon the request of a law enforcement officer, to submit to a chemical test designated by the law enforcement officer as provided in subsection (a) of this Code section, no test shall be given; but the law enforcement officer shall report the refusal to the department. Upon the receipt of a sworn report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been operating or was in actual physical control of a moving vessel upon the waters of this state in violation of Code Section 52-7-12 or that such person had been operating or was in actual physical control of a moving vessel upon the waters of this state and was involved in a boating accident which resulted in serious injuries or fatalities and that the person had refused to submit to the test upon the request of the law enforcement officer,

and the vessel being operated was a motorized vessel having ten or more horsepower or was a sailboat more than 12 feet in length, the department shall suspend the person's privilege of operating a vessel on the waters of this state for a period of one year.

(e.1) Nothing in this Code section shall be deemed to preclude the acquisition or admission of evidence of a violation of Code Section 52-7-12 if obtained by voluntary consent or a search warrant as authorized by the Constitution or laws of this state or the United States.

(f)(1) The law enforcement officer, acting on behalf of the department, shall personally serve the notice of intention to suspend or disqualify the privilege of operating a vessel on the waters of this state of the arrested person or other person refusing such test on such person at the time of the person's refusal to submit to a test or at the time at which such a test indicates that suspension or disqualification is required under this Code section. The officer shall forward to the department the notice of intent to suspend and the sworn report required by subsection (d) or (e) of this Code section within ten calendar days after the date of the arrest of such person. The failure of the officer to transmit the sworn report required by this Code section within ten calendar days shall not prevent the department from accepting such report and utilizing it in the suspension of an operator's privilege as provided in this Code section.

(2) If notice has not been given by the arresting officer, the department, upon receipt of the sworn report of such officer, shall suspend the person's privilege to operate a vessel and, by regular mail, at the last known address, notify such person of such suspension. The notice shall inform the person of the grounds of suspension, the effective date of the suspension, and the right to review. The notice shall be deemed received three days after mailing.

(g)(1) A person whose operator's privilege is suspended pursuant to this Code section shall request, in writing, a hearing within ten business days from the date of personal notice or receipt of notice sent by certified mail or statutory overnight delivery, return receipt requested, or the right to said hearing shall be deemed waived. Within 30 days after receiving a written request for a hearing, the department shall hold a hearing as is provided in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The hearing shall be recorded.

(2) The scope of the hearing shall be limited to the following issues:

(A)(i) Whether the law enforcement officer had reasonable grounds to believe the person was operating or in actual physical control of a moving vessel while under the influence of alcohol or a controlled substance and was lawfully placed under arrest for violating Code Section 52-7-12; or

(ii) Whether the person was involved in a vessel accident or collision resulting in serious injury or fatality; and

(B) Whether at the time of the request for the test or tests the officer informed the person of the person's implied consent rights and the consequence of submitting or refusing to submit to such test; and:

(C)(i) Whether the person refused the test; or

(ii) Whether a test or tests were administered and the results indicated an alcohol concentration of 0.10 grams or more or, for a person under the age of 21, an alcohol concentration of 0.02 grams or more that was unlawful under paragraph (2) of subsection (d) of Code Section 52-7-12; and

~~(C)~~(D) Whether the test or tests were properly administered by an individual possessing a valid permit issued by the Division of Forensic Sciences of the Georgia Bureau of Investigation on an instrument approved by the Division of Forensic Sciences or a test conducted by the Division of Forensic Sciences, including whether the machine at the time of the test was operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order, which shall be required. A copy of the operator's permit showing that the operator has been trained on the particular type of instrument used and one of the original copies of the test results or, where the test is performed by the Division of Forensic Sciences, a copy of the crime lab report shall satisfy the requirements of this subparagraph.

(3) The hearing officer shall, within five calendar days after such hearing, forward a decision to the department to rescind or sustain the suspension of the person's privilege to operate a vessel on the waters of this state. If no hearing is requested within the ten business days specified in paragraph (1) of this subsection, and the failure to request such hearing is due in whole or in part to the reasonably avoidable fault of the person, the right to a hearing shall have been waived. The request for a hearing shall not stay the suspension of the person's privilege to operate a vessel on the waters of this state; provided, however, that if the hearing is timely requested and is not held within 60 days and the delay is not due in whole or in part to the reasonably avoidable fault of the person, the suspension shall be stayed until such time as the hearing is held and the hearing officer's decision is made.

(4) In the event the person is acquitted of a violation of Code Section 52-7-12 or such charge is initially disposed of other than by a conviction or plea of nolo contendere, then the suspension shall be terminated. An accepted plea of nolo contendere shall be entered on the operator's record and shall be considered and counted as a conviction for purposes of any future violations of Code Section 52-7-12.

(h) If the suspension is sustained after such a hearing, the person whose privilege to operate a vessel on the waters of this state has been suspended under this Code section shall

have a right to file for a judicial review of the department's final decision, as provided for in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act'; while such appeal is pending, the order of the department shall not be stayed.

(i) Each time an approved breath-testing instrument is inspected, the inspector shall prepare a certificate which shall be signed under oath by the inspector and which shall include the following language:

'This breath-testing instrument (serial no. _____) was thoroughly inspected, tested, and standardized by the undersigned on (date _____) and all of its electronic and operating components prescribed by its manufacturer are properly attached and are in good working order.'

When properly prepared and executed, as prescribed in this subsection, the certificate shall, notwithstanding any other provision of law, be self-authenticating, shall be admissible in any court of law, and shall satisfy the pertinent requirements of paragraph (1) of subsection (c) of Code Section 52-7-12 and subparagraph ~~(g)(2)(C)~~ (g)(2)(D) of this Code section."

SECTION 4.

This Act shall become effective on July 1, 2009, and shall apply to offenses committed on or after such date.

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.